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FEB 16 2007

U.S. DISTRICT COURT, E.D.N.Y.
CLERK'S OFFICE ★UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : CR 04-911

-against-

United States Courthouse
Brooklyn, New YorkALPHONSE T. PERSICO
JOHN J. DeROSS,

Defendants.

November 9, 2006
12:00 o'clock noonTRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE STERLING JOHNSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

ROSLYNN R. MAUSKOPF
United States Attorney
BY: THOMAS SEIGELDEBORAH MAYER
KATYA JESTINAssistant United States Attorneys
One Pierrepont Plaza
Brooklyn, New York

For the Defendants:

SARITA KEDIA, ESQ.
Attorney for A. PersicoROBERT LaRUSSO, ESQ.
Attorney for J. DeRoss

I hereby certify that the foregoing is
true and accurate transcript from my
 stenographic notes in this proceeding.

Stere

Official Court Reporter
U. S. District Court

GR

OCR

CM

CRR

CSR

1 Court Reporter:

Gene Rudolph
225 Cadman Plaza East
Brooklyn, New York
(718) 613-2538

5 Proceedings recorded by mechanical stenography, transcript
6 produced by computer-aided transcription.

8 THE CLERK: United States versus Persico and DeRoss.
9 (Counsel present; appearances noted.)

10 MR. SEIGEL: Judge, we are here hopefully to set a
11 schedule for the retrial.

12 MR. LaRUSSO: May I speak first?

13 THE COURT: Go ahead.

14 MR. LaRUSSO: I had a brief conversation with
15 Mr. Kaye, just kind of tossing around possible ideas. From a
16 personal standpoint, Judge, I am trying to get myself back
17 into my practice. I have a lot of work that has to get taken
18 care of. This is not a case, I'm sure you realize, that we
19 can start picking a jury and get ready. It's going to take
20 some time to get ourselves geared up.

21 I would like, if it's okay with the Court, I know we
22 talked March, but I would prefer if we could to start the case
23 in April. That would give me plenty of time to --

24 THE COURT: I think April will be out of the -- I
25 have a death penalty case coming up. It was supposed to start

1 in January but one of the lawyers is on a death penalty case
2 now.

3 MR. LaRUSSO: Mr. Savitt?

4 THE COURT: It won't be finished by January. I
5 think it has to be before April.

6 What do you say?

7 MR. SEIGEL: The government's position is, we are
8 ready to try it when you want to schedule it, Judge.
9 Obviously --

10 THE COURT: Assuming I try the case.

11 MR. SEIGEL: We are ready to try it when Your Honor
12 is ready to try it. That's our position.

13 Your Honor, on that issue obviously we believe Your
14 Honor should do the retrial because, as Mr. LaRusso pointed
15 out, this is not a simple one week case. This is a case where
16 you have made a lot of rulings and invested a lot of time, as
17 has your chambers. So when Your Honor is ready to try the
18 case, we are ready to try the case.

19 THE COURT: Ms. Kedia?

20 MS. KEDIA: I would agree with Mr. LaRusso and ask
21 for an April or May date, if the Court is able to set it. I
22 understand the Court's schedule --

23 THE COURT: What date do we have?

24 THE LAW CLERK: We can do March.

25 THE COURT: How long would it take this time? It

1 was almost two months the last time.

2 MR. SEIGEL: Your Honor, I don't think the
3 government's case is going to be much different. I would
4 estimate -- I think our case took about four weeks, Judge.
5 Given it's a retrial and certain issues will have been
6 resolved by you already, I think maybe we could shave a half a
7 week off of it. Three weeks, three-and-a-half weeks for the
8 government's case.

9 THE COURT: How long would your case take?

10 MS. KEDIA: I think our case will be similar in
11 length.

12 MR. LaRUSSO: Yes.

13 MS. KEDIA: Several days.

14 THE COURT: Three weeks?

15 MS. KEDIA: No. Similar in length to the last time,
16 which was under a week, Your Honor.

17 MR. LaRUSSO: I agree.

18 THE COURT: What am I doing say in March, Anna?

19 THE LAW CLERK: March is open now. We have to
20 officially move the death penalty case. That still is
21 technically on for January. We will have a status conference
22 in a few weeks in which that will be officially moved.

23 Mr. Savitt's case is going to go into the first or
24 second week in February and he will need six weeks after that.
25 It is going to be at least the first week of April.

1 THE COURT: Let's schedule something say for the
2 second week in March.

3 MR. SEIGEL: Your Honor, what I would ask on that
4 issue is, since you ordered an anonymous jury last time, I
5 assume that's going to be the same this time. It's certainly
6 the government's position that that's important here. I would
7 ask that we have the jurors come in and fill out the
8 questionnaire sometime towards the end of February so we can
9 actually get started in March.

10 THE COURT: Why the end of February? Why not the
11 beginning?

12 MR. SEIGEL: Judge, again, if it's okay with you,
13 it's okay with me.

14 THE COURT: How long did it take to select the jury?

15 MR. SEIGEL: What --

16 THE COURT: Were you here at the beginning?

17 MS. KEDIA: Yes, Your Honor.

18 THE COURT: For the jury selection?

19 MS. KEDIA: I was here on and off. I was still in
20 the trial across the river.

21 THE COURT: No. I am talking about, were you part
22 of the jury selection?

23 MS. KEDIA: I was here part of the time, Your Honor.

24 THE COURT: I don't remember you. I am getting old.

25 MR. SEIGEL: Your Honor, it took us -- the jurors

1 had filled out a questionnaire, I believe it was on a Tuesday.
2 It was the day after Labor Day. We got them, I think once
3 they were all copied by the Court and we distributed them, we
4 got them around Thursday, and by Monday, we had given the
5 Court those strikes that we had agreed upon and the jurors
6 started coming in for individual voir dire the following
7 Tuesday. It took the whole rest of the week. It's about a
8 two-week process to get a jury. I think it will be the same.

9 THE COURT: Let's do it in the second week in
10 February.

11 MR. SEIGEL: So have the jurors come in, for
12 example --

13 THE COURT: Monday.

14 MR. LaRUSSO: That's good.

15 THE COURT: February --

16 MR. SEIGEL: February 12th, for example?

17 MS. KEDIA: I think it is a holiday.

18 MR. SEIGEL: 19th is a holiday.

19 MS. MAYER: The 19th is the federal holiday on our
20 trial calendar.

21 MR. SEIGEL: February 19th is Presidents' Day.

22 THE COURT: They can come in on the 15th, whatever
23 it is.

24 MR. SEIGEL: Judge, it is a special pool. You can
25 bring them in any day. It doesn't have to be a Monday. It

1 sort of works. It gives all of us about a week.

2 THE COURT: Let's get a date, the second week in
3 February.

4 You will be back from your sojourn by then?

5 MS. KEDIA: I will be.

6 I may actually have another trial in February, Your
7 Honor, in Judge Spatt's courtroom. Actually, I will know
8 probably a week from today.

9 THE COURT: They are just going to fill out -- where
10 is Mr. Smith?

11 MS. KEDIA: He is not here, Your Honor. I am not
12 sure --

13 THE COURT: That's evident.

14 All right.

15 MR. LaRUSSO: Judge, the only concern I have is if
16 we push it too far into early February, my partner and I have
17 a trial and I may be trying it in front of Judge Gershon on
18 February 5th. It's government --

19 THE COURT: The second week or third week.

20 MR. LaRUSSO: My concern, Judge, is that I just
21 can't switch gears without adequate preparation. I really
22 need some time. To go from this one trial in early February,
23 which I will be putting time in preparing and then trying to
24 switch gears and get ready for this one, I -- I am looking at
25 the end of February for a conclusion of that case.

1 THE COURT: All we are doing is they will fill out
2 questionnaire. You are going to agree which are the ones you
3 don't want.

4 MR. LaRUSSO: What would you be looking at as a
5 starting date, Judge? March 12th?

6 THE COURT: That's good.

7 MR. SEIGEL: February 12th or March?

8 THE COURT: No. The starting date.

9 MR. LaRUSSO: For the trial.

10 THE COURT: The trial.

11 MR. SEIGEL: Trial starts March 12th.

12 MS. KEDIA: Your Honor, what we would ask, I think,
13 maybe if I can have a moment with Mr. LaRusso?

14 (Pause.)

15 MR. LaRUSSO: What we are talking about, Judge, is
16 what Ms. Kedia's commitments and mine, I don't want to start
17 feeling the pressure of two cases. This one especially is
18 going to take all my time, like it did before. I don't want
19 to be divided in terms of my other responsibilities.

20 If we do the questionnaire, would it be all right
21 for the Court to pick the jury on March 12th? I think that
22 would give me enough time between trials, if I have to go to
23 trial in February. That the government said would last four
24 days, maybe five. There are three defendants still
25 outstanding on the six defendant case.

1 THE COURT: Which case?

2 MR. LaRUSSO: This is unrelated. This is another
3 case in front of Judge Gershon.

4 I am trying to discuss with you what my schedule is
5 going to be. I am going to be tied up, obviously, the last
6 week in January getting ready. If we pick the jury February,
7 we go through the first --

8 THE COURT: When is your case with Judge Gershon?

9 MR. LaRUSSO: It is set for February 5th for trial.

10 THE COURT: How long is it going to take?

11 MR. LaRUSSO: The government said four days.

12 THE COURT: Come on.

13 MR. LaRUSSO: That's what they said, Judge. It's a
14 gun running case. Six defendants initially.

15 THE COURT: Three have pled out, you said?

16 MR. LaRUSSO: At least three. I understand maybe
17 one more. May be only be two left, one of whom is our client.
18 We will be calling witnesses. It is a strange case, Judge.
19 They sold guns in South Carolina to an individual who was
20 going to bring them up here to New York and the issue is going
21 to be whether my client knew these were destined to come up
22 here.

23 MS. KEDIA: My trial, I expect, will start the
24 second week in February. I will know better next week.

25 THE COURT: Who is the judge?

1 MS. KEDIA: Judge Spatt.

2 THE COURT: Is it going to be out in Central Islip?

3 MS. KEDIA: Yes. Two weeks.

4 What we would ask is go ahead and have the
5 questionnaires distributed in February. We have no problem
6 with that. We just ask that the jury start being picked on
7 March 12th and then proceed immediately.

8 THE COURT: No. That's too long a period of time.
9 We will do it on February 12th, distribute it. They fill it
10 out. Then we can come back maybe a week, say the 19th. We
11 will decide when we are going to start selecting the jury.

12 MS. KEDIA: That is okay, judge. I very well can be
13 on trial the week of the 19th. I expect that if this case
14 goes to trial, that I will be.

15 THE COURT: Just let me know. We will see what we
16 can do.

17 MR. LaRUSSO: I should be off trial then.

18 MR. SEIGEL: Judge, the date for questionnaires is
19 the twelfth?

20 THE COURT: Right.

21 MR. SEIGEL: Then the 19th is actually -- that's the
22 federal holiday. So the 20th we will come back in?

23 THE COURT: Okay.

24 MS. KEDIA: Then we are starting the trial
25 March 12th?

1 THE COURT: Right.

2 Okay.

3 MR. LaRUSSO: If there is no other issue, Judge, I
4 would like to address the question of Mr. DeRoss's health
5 status. Last week --

6 THE COURT: I thought that's -- where is Mr. Green?

7 THE MARSHAL: He is downstairs.

8 THE COURT: I thought he took care of that.

9 THE MARSHAL: He brought it to the supervisor's
10 attention. He called over there. He said Mr. Beard was made
11 aware, the case manager.

12 MR. LaRUSSO: The staff here made calls over.
13 Nothing ever took place. He wasn't seen by a doctor. When he
14 was returned --

15 THE COURT: Draft up an order for me. We will serve
16 it directly on the warden.

17 What is wrong with him? He has stomach problems?

18 MR. LaRUSSO: Stomach pains, Judge, yes.

19 THE COURT: He has --

20 MR. LaRUSSO: Judge, he is not a complainer. I will
21 be very honest with you. I had -- you could see the
22 deterioration. It has to be addressed.

23 THE COURT: Even if he were a complainer, he needs
24 to have medical treatment. Draft up an order we will serve it
25 on the warden. It will be followed up by a call from

1 Mr. Seigel to the warden. Right?

2 MR. SEIGEL: Absolutely, Judge. Sure.

3 THE COURT: We will -- chambers will also call the
4 warden. He will also have a subpoena.

5 MR. LaRUSSO: What I will do, I will be back in my
6 office in about an hour and a half. I will fax something over
7 to the Court immediately. We can then fax it over to the
8 warden. I assume we can get it done by this afternoon.

9 THE COURT: Okay.

10 MR. LaRUSSO: Very good.

11 MR. SEIGEL: Thank you.

12 THE COURT: Nice seeing you all.

13 MR. LaRUSSO: The same here.

14 MS. KEDIA: Judge, on February 20th, I guess, all --
15 may I ask you a question?

16 On February 12th, when the questionnaires are
17 distributed, is the jury going to be brought and given
18 instructions?

19 THE COURT: They will just be brought in and told
20 partially sequestered, anonymous jury and they have to fill it
21 out and send it back in. They will be given numbers and
22 that's it.

23 MS. KEDIA: The Court doesn't need us to be here on
24 that date?

25 THE COURT: If you want to be here, fine.

1 MS. KEDIA: I expect I might be on trial. That's
2 why I am asking. Then the 20th --

3 THE COURT: The last time there was nobody here, I
4 don't think.

5 MR. SEIGEL: No. Last time there were no parties.

6 MR. LaRUSSO: That is correct.

7 MS. KEDIA: On the 20th, just the lawyers are coming
8 in to figure out the date we are going to actually start
9 picking the jury?

10 THE COURT: Yes. We might be picking the jury -- I
11 might be questioning the jury on the 21st.

12 MS. KEDIA: Very well.

13 MR. SEIGEL: Between the twelfth and 20th we need to
14 be reviewing the questionnaires?

15 THE COURT: You will get the questionnaires. They
16 will send it in. When do they send them back? When do we
17 gets it back?

18 MR. SEIGEL: It took about two days. What happened
19 was the clerk's office makes one copy. They give it to us.
20 Last time that took about two days. We send it out to the
21 service. They make copies for the defense counsel and us. We
22 then get the copy back.

23 THE COURT: There are about 40, 50 pages, the
24 questionnaire.

25 MR. SEIGEL: Right.

1 THE COURT: They make copies. Five hundred, what do
2 we get five hundred jurors?

3 MR. SEIGEL: We had 300, Judge.

4 THE COURT: Three hundred.

5 MR. SEIGEL: Yes.

6 THE COURT: Say 300. There will be three, four,
7 five.

8 MR. SEIGEL: We get -- it's usually, Judge, with all
9 due respect to the Court, it's the clerk's office that takes a
10 while because they have one machine and they have limited
11 personnel to do it. That took a couple of days. Once we get
12 it we send it to a service. They can turn it around in about
13 24 hours, no matter how many copies we need.

14 THE COURT: I am just talking about 300 copies per
15 person. Three adversaries, 300 copies for the court reporter,
16 300 copies for yours truly; 1500 copies.

17 MR. SEIGEL: Something like that, Judge.

18 THE COURT: In that ballpark.

19 MR. SEIGEL: We pay for that, Judge.

20 THE COURT: That's so wonderful.

21 MR. SEIGEL: I know.

22 THE COURT: Okay.

23 MS. KEDIA: Your Honor, we are going to be
24 submitting additional questions based on various things that
25 occurred during this trial as well as a conversation that I

1 have had at least with one of the jurors. We would like to
2 ask for additional questions in the questionnaire.

3 THE COURT: You spoke to one of the jurors?

4 MS. KEDIA: I did, Your Honor. He contacted me.

5 THE COURT: Okay. I said not to speak to them.

6 We have -- when are you going to do that? I want
7 you to do that right away.

8 MS. KEDIA: Certainly, Judge. We can do that within
9 the next week.

10 THE COURT: Okay.

11 MR. SEIGEL: Judge, can we just pick a date? If we
12 want to submit anything, we will do it the same by that week.
13 You can make a decision.

14 MS. KEDIA: We will do it by next Friday.

15 THE COURT: What is the date?

16 MS. KEDIA: I believe the 17th.

17 THE CLERK: The 17th.

18 MR. SEIGEL: Any additional questions by all parties
19 submitted to the Court by the 17th?

20 THE COURT: Okay.

21 MR. LaRUSSO: Very good.

22 THE COURT: All right.

23 MR. LaRUSSO: Thank you, Your Honor.

24 MR. SEIGEL: Thank you, Judge.

25 THE COURT: Have a nice trial.

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MR. SEIGEL: We will see you, Judge.

THE COURT: Okay.

MR. SEIGEL: Thank you.

MR. LaRUSSO: Thank you, Judge.

(Matter concludes.)